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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/573,716

04/16/2007

James Edward Delves

DPS-030810 PET-1015US

2244

64065

7590

01/09/2012

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EXAMINER

VANDEUSEN, CHRISTOPHER

ART UNIT

PAPER NUMBER

1774

MAIL DATE

DELIVERY MODE

01/09/2012

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/573,716</p>	<p><b>Applicant(s)</b> DELVES ET AL.</p>	
	<p><b>Examiner</b> CHRISTOPHER VANDEUSEN</p>	<p><b>Art Unit</b> 1774</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 January 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1774

Continuation of 11. does NOT place the application in condition for allowance because: Applicant has argued that the modification of Johannes '142 required for the rejection of claims under 35 USC 103 would destroy the utility of the device for the intended purpose. The examiner disagrees and asserts that the applicant has not appropriately considered the supposed modification to the device as outlined in the rejection. While Johannes '142 only teaches the mixing of two fluids by two separate inlets and series of slots, the device would be operable as a nonmechanical shearing mixer with only one set of slots; with only one inlet and set of slots (as per the removal of unwanted parts), both fluids would be inserted through a common inlet and would both pass through a single series of slots, which would promote their mixing. As such, this modified device would operate as a nonmechanical shearing mixer, so it would retain the stated purpose and function of Johannes '142. Further, the omission itself is motivated by the desire to remove unwanted components and as such the modification is considered to have proper motivation. As such, the rejection is considered to remain appropriate and is upheld.

Applicant further argues that the examiner is inconsistently interpreting Johannes '142 to fit his purposes. As stated in the Final Rejection, this is not the case. The examiner's interpretation of the claims is such that either of the two series of ports of Johannes '142 would meet the claimed limitation - the limitation of "only a single series of tangential slots" must be considered within the context "only a single series of tangential slots which creates one vortex of rotating flow in the solvent and/or solute between the fluidising unit and a discharge pipe". As stated in the Final Rejection, both of the two series of slots of Johannes '142 creates one vortex of rotating flow in a solvent or solute between the fluidising unit and a discharge pipe, and as such either of the two series would be sufficient to meet the claimed limitation. Thus, the removal of either series would leave the other series in place, and would be no more than an obvious modification. As such, the examiner's reading of Johannes '142 and the claimed limitations is indeed consistent.

Applicant argues that the position of the active mixing structure is in a different place than the active mixing structure of Johannes '142. The examiner agrees with this assertion; however, the position of the active mixing structure is not claimed, nor are any other limitations which patentably distinguish the instant invention from Johannes '142 or an obvious modification thereof.

Regardless of whether or not the modification to Johannes '142 under 35 USC 103 provides an appropriate rejection, applicant has failed to address the rejection of the claims under 35 USC 102 as per the interpretation stated on pages 3-4. The examiner has interpreted the claims in a reasonable manner which finds that Johannes '142 anticipates the claimed limitations, but this rejection is only dismissed in passing and its merits are not addressed anywhere in the Remarks Made in an Amendment. As such, it is presumed that applicant does not disagree with the interpretation stated by the examiner, which renders the claims anticipated by Johannes '142 and thus rejected thereby without any modifications. This rejection is upheld.